IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 18.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.20732 of 2004
& WVMP No.2589/2004 & WPMP No.24969/2004

R.Rajaraghupathy .. Petitioner

Vs.

1.The Secretary to Government,
Department of Rural Development,
& Local Administration,
St. George Fort,
Chennai-9.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Executive Officer,
Maraimalai Nagar Town Panchayat,
Chengalpattu Taluk,
Kancheepuram. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus to direct the respondents not to carry out the work of digging in channel in Survey Nos.110/3, 122/1 and 122/2, which will stop the supply of water from catchment area to the Vellancheri lake situated at Vellancheri Village, Kancheepuram District.

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For Petitioner : Mr.C.Ravichandran
For Respondents 1&2 : Mr.P.Subramanian, Govt. Advocate
For 3rd Respondent : Mr.V.Subbarayan
Mrs.P.V.Rajeswari,
Advocate Commissioner

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ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

The petitioner, by name R.Rajaraghupathy, has filed this Public Interest Litigation seeking to issue a Writ of Mandamus directing the respondents not to carry out the work of digging in channel in Survey Nos.110/3, 122/1 and 122/2, which will stop the supply of water from catchment area to the Vellancheri lake situated at Vellancheri Village, Kancheepuram District.

2. Considering the grievance expressed and the issue involved, by consent of all the parties, Mrs.P.V.Rajeswari, Member of the Bar has been appointed as Advocate Commissioner by an order dated 02.01.2006 for the following purposes:

> "(i) Whether by digging a channel or constructing a road across revenue channel as per F.M.Sketch it would prevent the collection of water from catchment area to Vellanchery Village lake?
> (ii) Whether the second and third respondents are diverting the water collected from catchment area to the Vellanchery lake by constructing a channel across the revenue channel to reach Vellanchery Thangal?
> (iii) Whether the authorities are constructing roads and drainage along the revenue channel as per F.M.Sketch and not across the revenue channel as per F.M.Sketch? and
> (iv) To find out the stage of construction work said to have been completed by the second and third respondents."

In the same order, the Division Bench has directed the Advocate Commissioner to submit a Report to this Court within a period of four weeks.

3. Pursuant to the direction of this Court, the Advocate Commissioner, after inspection along with the officials concerned, filed a report on 30.01.2006 along with the enclosures. The Commissioner has also filed annexure containing village map, combined map prepared by the Taluk Sub Inspector of Survey, Chengalpattu, Sketch prepared by Advocate Commissioner, Adangal Extracts, separate field maps of different survey numbers and copy of settlement register(relevant pages). With reference to the queries raised by the Division Bench in the order dated 02.01.2006, the Advocate Commissioner, after due inspection, has submitted the following information. They are,

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"(i) Since the revenue channel has been dug up to a depth of about one metre from the ground level under the bridge marked as (1) in red in Annexure-II and because of the construction of the supposed drainage in Survey No.110/3 and also 122/1A, 122/1B, 122/2A, 122/2B, 122/2C there is every possibility of water flowing through the plan marked revenue channel in Survey No.110/3 being diverted to the said drainage through the hole on the Western side wall of the above said bridge. Such diversion would prevent the collection of water from catchment area to the Vallancherry Village lake.

(ii) I submit that, as stated above, the construction of the bridge and the drainage would divert the water collected from the catchment area to the Vallancherry lake by the construction of channel/drainage across the revenue channel in survey No.110/3. However as I could note such diversion is not leading to the diversion of water to the Thangal.

(iii) I submit that as has been marked in the sketch in Annexures II and III, the authorities of the third respondent have constructed roads and drainage across the revenue channel.

(iv) I submit that as I stated above, I have noted the extent of cement construction of the drainage and the road running East West across the revenue channel in S.No.122/1A, 122/1B, 122/1C, 122/2A, 122/2B and survey No.110/3 is a mud road and the same is completed only on the Western side of the bridge marked as '1' in Annexure-II."

4. After filing of the above report, this Court has directed the third respondent to file the response to the details furnished by the Advocate Commissioner. Accordingly, the Executive Officer, Maraimalai Nagar, Kanchipuram District, has filed an affidavit dated 29.08.2006.

5. With regard to the observation made by the Advocate Commissioner in para 9(i), the Executive Officer has furnished relevant information. In para 3, he has informed this Court that the hole in the culvert indicated by the Advocate Commissioner has been closed by the third respondent on 29.08.2006. The information in para 3 of the counter affidavit of the Executive Officer is as follows:

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"I submit that this Hon'ble Court appointed Advocate Commissioner namely P.V.Rajeswari, Advocate to inspect that area and to submit a report as per the warrant of Commission. The Advocate Commissioner filed the report on 30.01.2006. She has pointed out that a big hole measuring about 1 foot in diameter exists on the western side wall, at the Southern end of the above said bridge or culvert, which would divert the water collected under the bridge from the revenue channel to the supposed drainage. Further, the learned Advocate Commissioner reported that the people in that area informed her that the hole has been put up by the villagers or encroachers. The encroachers who made encroachment on both side channel or canal blocked the water course and thereby the water collected during the rainy season could not reach the Vellancherry lake and thereby there is a heavy flow of water and stagnation. Due to the heavy stagnation of water entered into the encroachers house, hence they have put a hold in the culvert to divert the water through drainage constructed by the third respondent. Hence, I undertook on behalf of the third respondent to close the hold indicated in the report of the Advocate Commissioner. As undertook by me, the hole in the culvert indicated by the Advocate Commissioner has been closed by the third respondent on 29.08.2006."

6. In addition to the above information, the Executive Officer has also informed this Court that closing the hole put up by the encroachers in the culvert as indicated by the Advocate Commissioner will not solve the problem permanently unless and until the encroachments are removed and revenue channel is desilted, enabling the water to reach Vellancherry lake. The stand taken by the Executive Officer is appreciable one. In view of the same, a direction is issued to the third respondent to remove objectionable encroachments in the water ways and if the authority concerned is District Collector, he is directed to implement the same in accordance with law and keep the water channel desilted for free flow of water. If need arise, the third respondent is directed to deepen the water channel for free flow. The information furnished in paragraphs 3 and 4 of the counter affidavit of the third respondent is hereby recorded and he is also directed to implement the directions as mentioned above.

7. Coming to paragraph 9(iii) of the Report of the Advocate Commissioner, the third respondent has filed an affidavit stating that they did not construct any channel or canal and they have constructed only the culvert enabling the rain water to reach

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Vellancherry lake by canal and thereby, the action of the authority is no way against the agriculturist or the inhabitants of that area. In view of the same, the third respondent is directed to keep the channel or canal without any obstruction and if need arise, deepen the same for free flow of water during rainy season.

8. With the above directions, the writ petition is disposed of. No costs. WVMP No.2589/2004 and WPMP No.24969/2004 are closed.

9. Considering the nature of the work performed, we direct the petitioner as well as the third respondent to pay a sum of Rs.10,000/- each towards remuneration to the Advocate Commissioner. The said amount shall be paid within a period of two weeks from the date of receipt of a copy of this order.

sraa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Department of Rural Development,
& Local Administration,
St. George Fort, Chennai-9.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The Executive Officer,
Maraimalai Nagar Town Panchayat,
Chengalpattu Taluk,
Kancheepuram.

4. Tmt. P. V. Rajeswari,
Advocate Commissioner
No. 228, NSC Bose Road, Chennai 1.

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+ 1 cc to Mr. C. Ravichandran, Advocate SR No. 49356
+ 1 cc to Government Pleader SR No. 49230
+ 1 cc to Mr. V. Subbarayan, Advocate SR No. 48412

RNA(CO)
SR/27.10.2006 W.P.No.20732 of 2004

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